IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/10/2003

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THE HONOURABLE MR.JUSTICE P.K.MISRA

Writ Petition No.19229 of 2000
and
WMP.No.27868 of 2000

A.Ponnu ..... Petitioner

-Vs-

1.The Chief Education Officer
Tirunelveli 9

2.The Secretary and Correspondent
Caldwell primary School
Karikovil
Kalki Kumarapuram Post
(Via) Tisayanvillai
Tirunelveli 627 657

3. Stella Annabai
Headmistress
Caldwell Primary School
karikovil
Kali Kumarapuram Post
(Via) Tisayavilai
Tirunelveli District 627 657 ..... Respondents

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of certiorarified mandamus, as stated therein.

!For Petitioner : Mr.R.Singaravelu
for Mr.S.Rakkappan

For Respondents : Mrs.Thenmozhi Shivaperumal
AGP for R1
Mr.M.Devaraj for R2
Mr.S.Elamurugan for R3.

:ORDER

Heard the learned counsel appearing for the parties.

2. This writ petition has been filed for the issuance of a writ of certiorarified mandamus, to call for the proceedings dated 18.10.2000 in ep/K/vz;/4437/m5/2000 passed by the first respondent, quash the same and direct the first respondent to appoint Headmaster in accordance with the procedure laid down under Rule 15(4) of Tamil Nadu Private Schools Regulation Rules, 1974.

3. Certain factual backdrop is necessary to be noticed. The petitioner is working as Secondary Grade Teacher for more than 25 years under the second respondent/school. The post of Headmaster was vacant (w.e.f. 1st June,1993 due to the retirement of the previous Headmaster). At that stage, the father of the petitioner was the Secretary and correspondent of the second respondent school. The third respondent was selected and appointed to join as a Headmistress. She joined duty on 03.06.1993. On 18.16.1993, permission was accorded by the educational authorities to approve appointment of third respondent. On 21.0 7.1993, the present petitioner filed an appeal to the Chief Educational Officer who was the competent authority to decide at that stage. The appeal was allowed on 25.11.1994 mainly on the ground that the third respondent was not qualified to be appointed as Headmistress as she did not have the requisite five years experience as secondary grade teacher. It was also observed at that stage, that since she was an outsider, prior approval has to be obtained before appointing her. This order passed by the appellate authority was challenged by the present writ petitioner in W.P.No.10503 of 1994, wherein her main contention was to the effect that the appeal has to be disposed of without giving opportunity of hearing the petitioner as well as to the school committee. The writ petition was allowed on 14.01.2000, and the matter was remanded to the authority for fresh consideration. Thereafter, the appellate authority rejected the appeal by order dated 18.10.2000, on the ground that appeal had not been filed within stipulated period of 30 days as contemplated under Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. This order has been impugned in the present writ petition.

4. A counter affidavit has been filed on behalf of the contesting respondent. It has been indicated in the counter affidavit that the appointment of the third respondent had been subsequently approved on 18 .03.1995 by the District Elementary Educational Officer and an appeal against such order has been filed which is now pending before the Joint-Director of Elementary Education. It has been further stated that in the meantime, the Act has been amended and power has been given to the Government to relax any qualification for appointment as Section 20(3) of the Act has now been amended.

5. The learned counsel for the third respondent, however, pointed out that even assuming that there was no experience initially, in the mean time, the third respondent has worked for more than 10 years and therefore, the requirement relating to experience can be said to be satisfied at the present moment when the writ petition is being taken up.

6. The learned counsel for the petitioner has submitted that the requirement relating to experience being a statutory provision, there was no

jurisdiction to relax any such requirement and at any rate, the amendment which has been made in the year 1999 does not have any retrospective application. It has been submitted that since in the normal course, the question of appointment should be considered on the basis of promotion, if any outsider was to be appointed, prior approval should be obtained, and in the absence of any such prior permission, the appointment of the third respondent was illegal.

7. The learned counsel for the petitioner has also placed reliance upon the decision of this Court reported in S. Geetharamani Vs. District Elementary Educational Officer, Madurai and others (2001 WLR 463), wherein it has been held that in the absence of requisite experience, no such appointment could have been made.

8. On going through the various materials and record and the history of the several litigation and keeping in view the facts and circumstances of the case, I feel in the interest of justice to decide the matter with a view to curtail all fruitless litigation. In the present case, the appeal has been rejected on the ground that the appeal was barred by time. I find that in fact, there is only a delay of a few days in filing the appeal. Under the Act, there is a provision of condonation of delay up to a period of 30 days. Therefore, instead of taking a hyper-technical view in the matter, the appellate authority should have done well to condone the delay and to dispose of the appeal on merit. It is also found that another appeal is now pending before the Joint-Director.

9. In normal circumstances, after setting aside the order of the appellate authority, I would have remanded the matter for fresh disposal and would have given a direction for deciding both the appeals together. However, I desist from adopting such a course in the peculiar circumstances of the case more particularly because of the fact that the petitioner who was already worked for more than 25 years in the school is about to retire at the end of May , 2004 and even if the matter would be remanded now, the litigation are likely to linger. The basic objection of the petitioner regarding the qualification of third respondent remains valid objection, inasmuch as the third respondent did not have the requisite qualification at the stage when she was appointed. It is of course true, as pointed out by the learned counsel for the third respondent on many occasions Government used to issue order relaxing such qualification regarding appointment of Headmaster in Elementary School particularly when such person had higher qualification like Graduation and B.Ed., Training. But as observed in the decision reported in S. Geetharamani Vs. District Elementary Educational Officer, Madurai and others (2001 WLR 463), in the absence of any such provision in the Act and the Rules, there was no power to relax. It is thus evident that at the time when the third respondent was appointed, she did not have the necessary qualification inasmuch as she did not have the necessary experience. In normal course also, the appointment should have been made from th e existing teachers in the school by promotion and only in the absence qualified candidates an outsider could have been appointed and that too, only after obtaining the prior permission. As against these aspects, one cannot lose sight of the fact that in the mean time, the third respondent has acquired necessary experience and she has continued as Headmistress for about a decade

and the salary has also been paid to her. In these peculiar circumstances, one has to weigh the legitimate expectations of the petitioner vis-a-vis, the valuable right which is being enjoyed by the third respondent. A balance has to be struck.

10. Having regard to these peculiar circumstances and keeping in view the third respondent had more than 25 years of service, instead of remanding the matter for fresh disposal, I think interest of justice would be served by passing the following order:
(i) The third respondent would be permitted to avail leave from the end of November, 2004 till the end of May, 2004.
(ii) If any leave is not available, the third respondent as stated by her counsel may continue as Secondary Grade Teacher for the time being as she has no objection if the petitioner is appointed as Headmistress with effect from 01.12.2003 till her retirement at the end of May, 2004.
(iii) After May, 2004, the third respondent would continue as Headmistress of the school. This arrangement should be approved by the Educational Authority with a views of bring to an end to all fruitless litigation.

11. Accordingly, the writ petition is disposed of subject to the aforesaid directions and observations. Consequently, connected WMP is closed. No costs.

Index:yes
Internet:yes

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